

**State of California**

**State and Consumer Services Agency**

# **MEDICAL BOARD OF CALIFORNIA**



## **INTERESTED PARTIES WORKSHOP**

**March 29, 2012**

## MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 13, 2012  
ATTENTION: Medical Board of California  
SUBJECT: Regulations on Physician Supervision of Licensed  
Midwives (Business and Professions Code §2507(f).  
STAFF CONTACT: Curtis J. Worden, Chief of Licensing

### REQUESTED ACTION:

The Midwifery Advisory Council (MAC) has requested the Board to direct staff to set the matter of defining the appropriate level of physician supervision of licensed midwives for regulatory hearing. The proposed regulation is attached.

### BACKGROUND:

Business and Professions Code §2507(f) requires the Board to adopt regulations defining the appropriate standard of care and level of supervision required for the practice of midwifery by July 1, 2003. Due to the inability to reach consensus on the supervision issue, the Board bifurcated this requirement and in 2006 adopted Standards of Care for Midwifery (16 CCR, §1379.19). Three previous attempts to resolve the physician supervision issue via legislation and/or regulation have been unsuccessful.

Although required by law, physician supervision is essentially unavailable to licensed midwives as California physicians are generally prohibited in their insurance agreements from providing supervision of midwives who perform home births lest they lose their hospital privileges and insurance coverage. The MAC has previously reported to the Board on the barriers to care the physician supervision requirement creates, such as difficulty securing diagnostic lab accounts, obtaining syringes, IV equipment, oxygen, and necessary injectable medications, etc. California is currently the only state that requires physician supervision of licensed midwives.

On March 31, 2011, the American College of Obstetricians and Gynecologists and the American College of Nurse Midwives issued a joint statement as part of an ongoing initiative to promote collaborative practice between obstetrician-gynecologists and certified nurse-midwives and/or certified midwives.

At the December 13, 2011 MAC meeting, Council members discussed draft language to define the appropriate level of physician supervision of licensed midwives via regulation and voted to request that the Board set the matter for regulatory hearing.

### ANALYSIS:

The proposed regulation sets forth a more collaborative approach to the physician supervision issue by providing that the supervision requirement in law is met if the licensee established a

collaborative relationship with a physician who agrees to provide guidance and instructions in the specified circumstances. As is apparent, this is a different approach than saying that a physician has to be on a site at a specified location or available by pager, telephone or other device within a certain time period.

Whenever this issue is discussed, the subjects of liability and insurance (and the cost and availability thereof) always arise. The proposed regulation does provide that a business relationship is not created solely by a physician providing consultative services to or by accepting a referral from a licensed midwife.

A full analysis of possible objections to the proposed regulation is not possible at this time, since both of licensed physicians that were on the MAC had officially resigned prior to the December 13, 2011 MAC meeting. Therefore, Council members and staff did not have input from a licensed physician at the meeting. A California Medical Association representative was present at the meeting; however, she did not provide any public comment. In addition, no one representing the insurance industry was present at the meeting.

#### FISCAL CONSIDERATIONS

No fiscal impact.

#### STAFF RECOMMENDATION:

Given the Board's prior unsuccessful attempts to develop regulations on the appropriate level of physician supervision of licensed midwives and the widely divergent opinions of interested parties, staff recommends that the Board consider directing staff to schedule an interested parties meeting to discuss concerns and issues. The issues and concerns brought forth at the meeting could then be summarized and analyzed by staff and brought back to the Board or MAC for further discussion and consideration. To the extent practicable, resolving issues prior to commencing the formal rulemaking process may lead to a more successful effort.

**Medical Board of California  
Physician Supervision of Midwives  
Specific Language of Proposed Changes  
Draft—11-29-11**

Adopt section 1379.23 in Article 3.5 of Chapter 4 of Division 13, Title 16 Cal.Code Regs. to read as follows:

1379.23. Physician Supervision Requirement.

- (a) The requirement for physician supervision contained in Section 2507 of the Code is deemed to have been met if the licensed midwife has established an informal, collaborative relationship with at least one physician who meets the requirements of section 1379.22 and who agrees to provide guidance and instructions regarding the care of women and/or newborns and to provide emergency advice should complications develop.
- (b) A physician and surgeon shall not be deemed to have established a business relationship or relationship of agency, employment, partnership, or joint venture with the licensed midwife solely by providing consultation to or accepting a referral from the licensed midwife.

NOTE: Authority cited: Sections 2018 and 2507(f), Business and Professions Code. Reference: Section 2507, Business and Professions Code.

## MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 13, 2012  
ATTENTION: Medical Board of California  
SUBJECT: Midwifery Regulations  
STAFF CONTACT: Curtis J. Worden, Chief of Licensing

### REQUESTED ACTION:

Direct staff to schedule a public hearing at the May 3-4, 2012 Board meeting to review the adoption of proposed regulation Section 1379.24 in Chapter 24 of Division 13, Title 16 California Code of Regulations authorizing licensed midwives to obtain and administer drugs, immunizing agents, diagnostic tests and devices, and to order laboratory tests, consistent with their educational requirements.

### STAFF RECOMMENDATION:

Staff recommends that the Board set for regulatory hearing the adoption of Section 1379.24 in Chapter 24 of Division 13, Title 16 California Code of Regulations, along with any edits or additional provisions that the Board may suggest for inclusion in the regulation.

### BACKGROUND:

Current regulations address the educational requirements for midwifery education programs (16 CCR §1379.30). The education program must prepare the midwife for the management of the normal pregnancy, labor, and delivery, including the administration of intravenous fluids, analgesics, postpartum oxytocics, RhoGAM, amniotomy during labor, local anesthesia, paracervical blocks, pudendal blocks, local infiltration, episiotomies, repair of episiotomies and lacerations, administration of vitamin K and eye prophylaxis, and management of routine gynecological care including barrier methods of contraception such as diaphragms and cervical caps. However, current regulations do not specifically authorize a licensed midwife to incorporate these requirements into her practice. As such, midwives often face difficulty in securing supplies such as oxygen, anesthetics, and oxytocics in order to practice safely and effectively.

At the Board's May 6, 2011 meeting, the Midwifery Advisory Council proposed that staff move forward to develop regulations to ensure that midwifery practice and educational requirements are consistent, specifically authorizing licensed midwives to obtain and use the resources they have been educated for. The Board directed staff to work on regulations to ensure consistency.

At the December 13, 2011 Midwifery Advisory Council (MAC) meeting, legal counsel presented language for the proposed regulation. The MAC approved the proposed language with minor edits (attached).

### ANALYSIS:

The attached proposed regulation will clarify that licensed midwives have the authority to obtain, order, and administer the drugs, devices, and tests that they have been educated to use in the management of the normal pregnancy, labor, and delivery. In essence, this regulation rectifies

an inconsistency in existing regulations: while midwives are educated to obtain, order, and administer these items, they often cannot acquire them without enormous difficulty.

FISCAL CONSIDERATIONS

No fiscal impact.

**MEDICAL BOARD OF CALIFORNIA**  
**Midwifery Program**  
**Specific Language of Proposed Changes**  
**Draft – 12/14/11**

Adopt new section 1379.24 in Chapter 4 of Division 13, Title 16 Cal. Code Regs. To read as follows:

1379.24 Practice of Midwifery

A licensed midwife shall have the authority, limited to the practice of midwifery, to obtain and administer drugs, immunizing agents, diagnostic tests and devices, and to order laboratory tests. This authority includes, but is not limited to, obtaining and administering intravenous fluids, analgesics, postpartum oxytocics, RhoGAM, local anesthesia, oxygen, local infiltration, vitamin K, eye prophylaxis, diaphragms and cervical caps.

NOTE: Authority cited: Section 2018, Business and Professions Code.  
Reference: Section 2507, Business and Professions Code.